It is thus evident that courts will go a long way in upholding badly drawn descriptions. Failure on the part of draughtsmen to observe the caution indicated above, although the deed may ultimately be held adequate, will almost certainly result in a lawsuit. R. W. A.

CONSTITUTIONAL LAW—TAX ON EMPLOYMENT OF CHILD LABOR.—The federal Child Labor Tax Law, Act of February 24, 1919, levied a tax of ten per cent on the net income of persons employing child labor. The act exempts from its operation employers who do not know the child employee to be under age. It also provides for the appointment of inspectors by the Secretary of Labor.

This act was held to be unconstitutional in the case of *Bailey v. Drexel Furniture Co.*, 42 Sup. Ct. 449. The court in disposing of the case states that the manifest intent of the act is regulatory in nature and invades powers lodged exclusively in the states (Const. Amend. 10): "A court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed." The court goes on to say: "Its prohibitory and regulatory effect and purpose are palpable; all others can see and understand this; how can we properly shut our minds to it?" The court refused to overrule an earlier decision rendered in the case of *McCray v. U. S.*, 195 U. S. 27. In that case an act of Congress was held constitutional which imposed a tax of ten cents per pound on colored oleomargarine. The act was entitled, "To provide for the inspection and regulate the manufacture and sale of certain dairy products." It provided that oleomargarine, free from artificial coloration that caused it to look like butter of any shade of yellow, should be taxed at the rate of one-quarter of a cent per pound. In holding this act to be within the taxing power of Congress and therefore constitutional the court states that "given a power in Congress to act, it is not for the judiciary to look into the motives of Congress." It was known that the passage of this act was to protect the dairy interests and destroy the oleomargarine industry. It was clear that instead of raising revenue the act would actually decrease the revenue, for it would destroy the business. On the very face of the act it was regulatory in nature, for it distinguished between colored and non-colored oleomargarine. It is clear that it was the purpose of Congress to penalize the production of the colored product. In rendering its decision the court shut its eyes to all of these facts and held the act to be within the taxing power of Congress.

The early case of *Veazie Bank v. Fenno*, 8 Wall. 533, is also in point. It involved the constitutionality of an act of Congress which levied a tax on all state circulation notes. The tax was so excessive as to indicate the real purpose of Congress, which was to destroy the power of the states to issue this kind of paper. The act was held valid as being within the taxing power of Congress. The court stated that Congress, having the power to tax, was free to exercise that power to the extent of destroying, if necessary, the excessive burden of a tax being no objection to its validity. Since this decision can be upheld on the theory that the thing sought to be accom-

plished by means of the taxing power was legitimately within the power of Congress (Const., Art. 1, Sec. 8), this case is not authority for the decision in *McCray v. U. S.* Neither is it authority for the statement that the court will not look beyond the words of the statute to find the real intent of Congress. In *U. S. v. Doremus,* 249 U. S. 86, the validity of the United States Narcotic Drug Act was called into question. On the face of the act it was regulatory in nature, but the court properly held that the prescribed regulations had a reasonable relation to the enforcement of the act, and the act was held to be constitutional. It is true, however, that the court refused to look beyond the face of the act to determine its real purpose.

In 1918 Congress passed an act prohibiting the transportation in interstate commerce of child-labor products. In the case of *Hammer v. Dagenhart,* 247 U. S. 251, the act was held to be unconstitutional, the court taking the view that the provisions of the act had no reasonable relation to interstate commerce, the power invoked by Congress to authorize the act. The decision rendered in this case was an expression of the desire on the part of the court to draw a check on federal legislation which could be sustained only by strained interpretation of the legislation or of the constitutional provisions involved. The court refused to give a more liberal interpretation to the Constitution in order to make it harmonize with legislation that was clearly beyond the power intended to be given by that instrument to Congress. It is conceded by all that, from a social and economic point of view, child-labor legislation, legislation checking white slavery, the sale of narcotics, etc., are designed to accomplish very good and desirable objects; but here we are not concerned with the desirability of the legislation but with its constitutionality. The court made a labored effort to distinguish the doctrines of the *McCray* case from those of the instant case, but without convincing success. In distinguishing the *Bailey* case from that of *McCray v. U. S.* the court stated that in the child labor case the purport of the act is shown on its face and by its terms to be a regulatory and not a taxing measure. As has been pointed out above, the objects sought to be accomplished by the two acts involved in these cases are equally clear. No reasonable man could say, after reading the Act of May 9, 1902, that it was intended to raise revenue.

The decisions in these two cases leave the matter in a very unsatisfactory situation. The cases cannot be distinguished and they are both still law. The one says that the court will not delve into the intent of Congress in passing a particular act; the other says that when the prohibitory and regulatory effect is palpable, when all others can see and understand it, the court will not close its eyes to it. It is true that presumptively Congress will act within its constitutional powers; but, like every other presumption of this kind, it should not be treated as conclusive. When there can be no reasonable doubt as to the intent of Congress in passing a particular act, when the probable effect of an act will be the accomplishment of objects not within the constitutional power of Congress, then it would seem that the court should look back of the mere words of the act, see just what the probable operation of the act will be, and then determine whether or not

such an act is within the power of Congress. We shall thus be able to avoid the danger pointed out by Mr. Chief Justice Taft in his opinion in the *Bailey* case, when he says, "Grant the validity of the law, and all that Congress would have to do hereafter in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction over which is reserved to the states by the Tenth Amendment to the federal Constitution, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called 'tax' upon departures from it. To give such magic to the word tax would be to break down all constitutional limitations of the powers of Congress and completely wipe out the sovereignty of the states." W. E. B.

SUPREME COURT REPORTS.—The REVIEW has been asked by the Court Reporter to publish the following statement:

"Last July Congress passed an act (Public Act No. 272) providing for the publication of the Official Reports of the Supreme Court in the government printing office and for their sale to the public at cost of production, including a part of the appropriation made for the maintenance of the Reporter's office. This did away with the method of publication through contracts between the Reporter and private publishing houses, which had obtained from the beginning. The last contract of that kind expired with the publication of Volume 256, which completed the reports for the October, 1920, term. The letting of a new contract to cover the opinions of the 1921 term was impracticable, owing to the pendency of the legislation, to the expectation that it would be enacted long before it actually was, and to definite indications that, when enacted, it would supersede the contract method.

"For various reasons incident to the ending of the old contract and the legislative change, editorial work on the opinions of the 1921 term was seriously delayed. Time also was consumed by administration preliminaries under the new law and in making necessary preparations in the printing office. Notwithstanding this, however, gratifying progress has been made. The reports of these opinions will be contained in three volumes, to be numbered 257, 258 and 259, all of which, it is confidently expected, will be published in bound and pamphlet form before the close of the year."

THE RAILWAY STRIKE INJUNCTION.—The bill in this case was filed by the United States of America against various labor organizations, and officers of such organizations, concerned in the strike of railway shopmen. It alleged (in brief) a conspiracy on the part of defendants to compel the railroads to disregard the wage decision of the Labor Board, by obstructing the transportation of passengers and property in interstate commerce and the carriage of the mails. A temporary restraining order was issued on September 1, and a temporary injunction on September 25. None of the defendants answered the bill, but two of them appeared, moving to dismiss the bill and